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ABSTRACT

How should schools treat unruly children? Answers to this question are offered, with a focus on children's rights and the abolition of corporal punishment in Britain. The case for children's rights in isolation is not promoted, but rather within the context of the rights and the responsibilities of pupils, teachers, and parents. The discussion provides an historical perspective on physical chastisement in the home and at school, an analysis of the impact of the European Court of Human Rights on the abolition of physical punishment in Britain, and a review of alternative sanctions currently being explored. The debates surrounding corporal punishment in schools are considered, particularly the efforts to reintroduce the practice despite the Court's condemnation of the practice. The emphasis throughout is on the dignity and integrity of the person, based on the international dissemination of legal norms that can serve as a mechanism of social control. But with the greater valuing of children, it is suggested that teachers must also be appreciated and should be supported by an effective school-governance system. Curriculums, too, must be revamped so that offerings will engage pupils' interests and strengths. (RJM)

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Sparing the Rod: Schools, Discipline and Children's Rights in Multicultural Britain.

by

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Abstract

How should we treat unruly children in our schools? Which punishments are appropriate? successful?; and will they instill order and discipline in the next generation? These are the perennial questions asked by adults, answered by adults, and rarely posed to children themselves! Instead, educationalists and parents have sought to control minors by resorting to a variety of disciplinary sanctions. Today, however, the questions have to be set within a developing philosophy of "children's rights' whereby young people are seen as having entitlements which challenge existing notions of adult authority.

This paper explores these issues within an overarching theme of human rights. It does not seek to promote the case for children's rights in isolation, but rather locates the question within the context of rights and responsibilities of pupils, teachers, and parents. Discussion provides an historical perspective on physical chastisement in the home and at school; analysis of the impact of the European Court of Human Rights on abolition in Britain; and a review of alternative sanctions being explored. Further, attempts to re-introduce the cane are considered notwithstanding clear indication from Strasbourg that violence can no longer be condoned. Finally, the dignity and integrity of the person will continue to be at the forefront of the debate on children's rights as there is clearly discernible an international dissemination of legal norms which can serve as a mechanism of social control, responsive to changing popular ideologies and effecting influence on social policy and practice.

Introduction

This paper provides an exploration of the abolition of corporal punishment in Britain and the development of alternative sanctions located within an over aching theme of human rights. the discussion focuses on:

(I) on examination of the traditional use of corporal punishment in the home. and the schools.

(ii) reference to the movement to abolish the physical chastisement of minor`s in Britain specifically. and in Europe in general. and:

(iii) consideration of the debates surrounding corporal; punishment in schools. and attempts to re-introduce the practice despite clear indication from the European Court of Human Rights in Strasbourg. that violence in schools can no longer be condoned.

(iv) Further. alternative strategies for handling discipline in schools is addressed; and

(v) finally. the discussion draws to a conclusion by highlighting the issue of "rights in conflict" whereby the rights of the child are being asserted. distinct from and sometimes set against those of adults.

(I) Physical Punishment in the Home and School

"I grew up beside you. you smote my back. and so your teaching entered my ear" (pupil to teacher. Ancient Egypt. 2000 B.C.)[1]

Physical chastisement has been used universally in both the home and school for instilling discipline into the young. Concepts of morality have placed legitimacy on the practice with not only an acceptance but an expectation that child rearing and corporal punishment should go hand in hand. and this has been carried over into school life. As the beginnings of state education in

Britain is embedded in the 19th century, it is with the Victorians that this historical perspective on corporal punishment and children begins. Discussion then moves to the doctrine of 'in loco parentis' whereby parents have been perceived as having delegated their authority to teachers, and the accompanying right to administer corporal punishment on their children.

The Victorian Attitude towards Corporal Punishment

Corporal punishment had a long-standing tradition which was sanctioned by the norms and values of Victorian society. Rooted in the concept of "original sin", this sanction was condoned by parents who expected, and indeed in many instanced demanded that it be inflicted on their offspring. "Original sin", or a state of being alienated from God, was believed to be manifested in acts of sloth or insubordination and teachers were considered to be ideally places to lead children out of ignorance and sin.[2] (This attitude still remains part of the ethos of some religious schools when implementing corporal punishment).[3] As Scott (1938) notes in his "History of Corporal Punishment", physical chastisement was considered an excellent instrument for the correction of children" and was used as a panacea for all breaches of discipline (p.94). In Scotland, for example, use was made of the "tawse" or strap, while in the Isle of Man the "birch" was favoured (This was evidenced in the Tyrer case (1978)[4] which was adjudicated in Strasbourg).

Dr. Samuel Johnson's views on corporal punishment are revealing for what they suggest about Victorian attitudes. He contended that there were three important reasons for using this form of disciplinary measure: "the need of society to produce people who would conform to accepted norms; a moral need to beat out obstinacy, a symptom of "original sin"; and as a necessary tool to ensure learning takes place".[5] Johnson advocated the use of corporal punishment and actually attributed his expertise in Latin to the severe beatings he received:

> "My master whipt me very well. Without that Sir, I should have done nothing" (ibid.)

Gibson (1978) notes the obsession which parents had with the need to beat their children

"Upper and middle-class Victorians ... never tired of reminding theirselves that the beating of naughty children has been strictly enjoined upon them by God" (p.48).

It was from the Bible that authority was sought to justify the practice and support was amply provided in Proverbs with such precepts as:

"For whom the Lord loveth he correcteth: even as a father the son in whom he delighteth" (III, 12).
"He that spareth the rod hateth his son: but he that loveth him chasteneth him" (XIII, 24).
"Chasten thy son while there is hope, and let not they sole spare for his crying" (XIX, 18).
"Thou shalt beat him with the rod, and deliver his soul from hell" (XXIII, 14).

Such entreaties are embodied in Samuel Butler's oft-repeated maxim of "spare the rod and spoil the child", which provided sufficient philosophical and religious justification to carry out what morally necessary to ensure the salvation of the child, and which provided inspiration for the title of this paper.

In keeping with this tradition, schoolmasters and mistresses in both boys' and girls' schools dispensed liberal doses of corporal punishment in interpreting the wishes and expectations of parents. This situation is well-captured in William Shenstone's poem, "The Schoolmistress":

In ev'ry village mark'd with little spire
Embow'r'd in trees and hardly known to fame,
There dwells, in lowly shed, and mean attire,
A matron old, whom we Schoolmistress name;
Who boasts unruly brats with birch to tame;
They grieven sore, in piteous durance pent,
Aw'd by the pow'r of this relentless dame;
And oft-times, on vagaries idly bent,
for unkempt hair, or task unconn'd, are
sorely shent".[6]

Barnard (1971) states that although this poem describing a "dame School" was written in 1742, "there were schools in existence for more than another century of which the description would still hold good" (p.2).

Such was the widespread application of corporal punishment in public schools that it earned for the country the ignominious reputation of "the English vice", which Ian Gibson took for the title of his book on the subject. Apart from the contention that corporal punishment derived from its legitimacy from God, Gibson notes that "obedience and duty" were "two imperatives which dominates all nineteenth-century discussions on the education of children: and which forbade all insubordination to parental authority" (p.51). Jonathan Gathborne-Hardy reiterates these themes in his works on 19th century values and attitudes, claiming that middle and upperclass parents had little hesitation in using corporal punishment and justifying its application in the country's public schools.[7]

Parents of children attending public (non-maintained private) schools specifically wished corporal punishment to be used whenever required on their children, and inevitably teachers were delegated the responsibility of metering the sanction. That parents were prepared to allow their children to be treated in this manner seems to be entrenched in the fact that they were able to demonstrate emotional detachment in order to ensure their children's steadfastness and ultimate salvation. By sending their offspring away from home for their education, they expected that their moral as well as academic welfare would be attended to.

With this assumption to the fore, mid-19th century headmasters like Arnold of Rugby and Thring of Uppingham dispensed swift and regular physical justice. Dr Arnold was a case in point for, whilst widely regarded and respected as a humane and enlightened educationalist, he was also a firm advocate of discipline. In an essay published in 1835, entitled "On the Discipline of Public Schools", he contended that children's disobedience stemmed from the concepts of "pride" and "sin" and that corporal punishment was useful in assisting them in seeing the "truth" and "light", (as cited in Gibson, p.65). Writing in 1845 he maintained that children were by their very age and nature, subordinate to adults:

> "Impatience of inferiority felt by a child towards his parents, or by a pupil towards his instructors, is merely wrong because it is at variance with the truth: there exists a real inferiority in the relation, and it is an error, a fault, a corruption of nature not to acknowledge it" (ibid.).

The right to inflict some form of corporal punishment was also in many instances extended to prefects as well as teachers, the extreme evidence of which is well-captured by the antics of Flashman in Hughes' "Tom Brown's Schooldays" (1890), who used this right or privilege to "roast" Tom.

Permeating the whole public school system, corporal punishment, was notes Gibson, "given prestige ... and initiated elsewhere: the assumption being that what was good enough for public school boys was good enough for everyone else" (p.66). Parents, could therefore, expect that it was highly likely that their children would receive physical chastisement, and teachers operating within the maintained (state) system could in turn expect to be charged with carrying out the measure. As children often boarded at public schools the notion of parental delegation or acting "in loco parentis" was even more significant:

> "If ever there was a schoolmaster who felt himself to stand "in loco parentis" to the pupils it is the preparatory school headmaster ... the more so given the tender years of those committed to his care" (ibid., p.67).

Public school teachers traditionally had a greater responsibility and authority for the welfare of their charges: firstly by virtue of the fact that they were frequently boarding pupils and secondly; the use of corporal punishment was an integral constituent of the educational process. This point is highlighted in the renowned case of Regina v. Hopley (1860)[8], in which a pupil ultimately died as a result of receiving a beating from a schoolmaster who had specifically sought permission to inflict the punishment from the boy's father. Upon finding himself indicted for manslaughter, the defending teacher wrote:

> "... while anguish shook the frame, the conscience suffered not one pang. I searched and

searched among the deepest secrets of my soul, and could not blame myself ... I could look up tranquilly into the face of heaven who knew me to be Not Guilty" (as cited in Leinster-Mackay 1977, p.2)."

Clearly he considered that his actions had been justified and that "he acted for the good, in an age which accepted his actions as not too abnormal" (ibid.).

Evidence in this initial section has illuminated some of the Victorian tenets regarding child rearing, the use of corporal punishment, and its traditional use in public schools. The discussion now moves to exploring: the impact of the European Court and Commission on British educational policy; removal of corporal punishment as a disciplinary sanction; and the implications of the Strasbourg decisions for teachers and children's rights. Further, the ramifications for policy-makers, local education authorities, headteachers and school governing bodies are also explored as the findings call in to question the customary role of teachers in the United Kingdom, and the new arrangements concerning schools and discipline.

(II) The Impact of Strasbourg

Traditionally, corporal punishment was an intrinsic feature of our schools, supported with biblical and literary entreaties not to "spare the rod and spoil the child". Indeed, such was the widespread application of physical chastisement in our public schools in the last century, that it earned for the country the ignominious reputation of "the English vice", as discussed in the previous section. Not until this century was a serious challenge to the practice mounted and then through a European forum.

Parents of children who received or were threatened with corporal punishment in British schools lodged complaints at the European Court of Human Rights, after having failed to gain satisfaction through our domestic courts. They invariably relied on two specific articles within the European Convention on Human Rights and Fundamental Freedoms (1950)[9]. Article 3 provides "no one shall be subjected to torture to inhuman or degrading treatment of punishment". Article 1 of the first protocol to the treaty deals more pointedly with education prescribing that "no person shall

be denied the right of education", and in any function which the state assumes in relation to education and teaching, it shall respect the religious and philosophical convictions of parents.

It is unlikely that the framers of the Convention in the 1940's conceived of these two provisions as having application to the issues of corporal punishment in schools, but the treaty has a dynamic character which permits it to be tailored to contemporary norms and values. As such, in the 1980's the European Court was prepared to consider instances of physical chastisement in British schools as akin to "degrading treatment", and that in certain circumstances the sanction could amount to a violation of human rights. (Tyrer (1978), Mrs X (1980)[10], Townsend (1986)[11]). Furthermore, even the threat of corporal punishment could be tantamount to violating the philosophical convictions of parents opposed to its use. (Campbell and Cosans (1982)[12]). Over thirty cases were lodged at Strasbourg during the last decade, and the Government suffered a humiliating loss in trying to defend physical chastisement as a disciplinary sanction in schools.

(III) A Return to the Cane?

Realistically, a return to corporal punishment in schools would be highly problematic. The Government has entered into a treaty and is bound by the decision of the European Court which has made it clear that unless we respect parents' philosophical convictions on physical chastisement, we are in breach of their human rights. In effect, that means that no domestic law can be in conflict with principles contained in the European Convention.

How then, can we avoid alienating Strasbourg? The Government could attempt to introduce a bill whereby parents could opt in or out of corporal punishment: in other words, sign your child up to be whacked! This might appeal to those who believe "it never did me any harm". But how could schools implement such a system? Children in classrooms could wear different colour badges to assist teachers in deciding to cane or not to cane? Or you could have schools divided into cane and cane-free zones!

When this two tier scheme was mooted in 1985, it was noteworthy for the fact that it united previously opposing factions on the issue of corporal punishment to declare it as ludicrous,

unworkable, and educationally indefensible. Common sense prevailed and only complete abolition of the practice was found to be acceptable. The same would be true today. Even if parents were inclined to sign up their children for caning, teachers would be left in the absurd position of having to arbitrate different punishments for the same misdemeanour. Moreover, corporal punishment was traditionally used more frequently for boys than for girls. If that pattern reoccurred, schools could fall foul of the Sex Discrimination Act (1975)[13] which quite rightly conceives of gender as a two-way street, and is unlikely to countenance treating boys and girls differently in this matter.

Legally it is a non-starter and socially there are also difficulties. Abolition of corporal punishment has caused us to reconsider how we perceive children not only in schools, but in society in general, and the concerns surrounding children's rights. In a violent society, is a return to corporal punishment the only way in which discipline and respect for others can be enforced? Unruly and disruptive behaviour in the young, so clearly evidenced in recent cases at Manton[14] and the Ridings[15] schools, has been attributed to a number of factors including: inadequate parenting; and a general absence of deference to authority. In these circumstances, some may be persuaded that a move towards legitimising force is the only viable option left to teachers who have to instil discipline in the classroom. Corporal punishment as retribution, could be seen as a deterrent to others, a clear signal that the school has no longer "gone soft" on pupil disobedience. Yet, analysis of school punishment books prior to abolition, reveal that the same pupils' names appears repeatedly suggesting that the sanction was not working. Also, the research of the pressure group Society of Teachers Opposed to Physical Punishment in the 1980's provides evidence that in some schools the cane was not used as a last resort but administered regularly and abusively!

(IV) The Removal of Corporal Punishment and Alternative Sanctions

The implications of the removal of corporal punishment has now been digested. Whilst the practice of corporal punishment has been effectively abolished for pupils in maintained schools and a percentage in the non-maintained sector, teachers have been compelled to remove the disciplinary sanction and secondly, to provide alternative form of punishment.

The context of the debate today no longer rests within the area of pro- and anti-canning lobbies but in the realm of what has replaced corporal punishment. There has been no point in rehearsing the arguments or attempting to reconcile opposing factions but instead an urgent need to explore the implications of abolition. If teachers are no longer permitted to use physical chastisement, what alternative sanctions should be at their disposal? Prior to 1986 some local authorities abolished corporal punishment in the absence of statutory enactment and, consequently, attempted to deal with this question ahead of time. Despite the fact that the whole of the country was instructed to remove corporal punishment from schools, shortcomings of the 1968 Act have meant that pre-schoolers, for example, have not been afforded protection under the legislation. Further for those pupils who do come within the jurisdiction of the Act, corporal punishment may still be administered as "old habits die hard". Without careful monitoring, what is now deemed illegal may still continue and local authorities must have a contingency policy with careful thought given to the disciplinary procedure for teachers who ignore the law. Now that obstacles to educational reform have been overcome.

> "schools must ... be given clear discipline policies, supportive arrangements, adequate procedures, staffing and other resources essential if the policy and practice are to become more than pious hope or paper exercise" (ibid., p.15).

Alternative Sanctions

It still remains unclear who or what is "in loco parentis" now that teachers have been forced to vacate the position with regards to corporal punishment. Along with a new definition of "a teacher" with the attendant duties and responsibilities, the position of the teacher vis-a-vis disruptive and violent pupils continues to need addressing. Teacher's contractual obligations have been to carry out reasonable requests of the headteacher. The presence in a classroom of a particularly violent or disruptive pupil may cause problems to arise if a teacher is no longer to be "in loco parentis" as previously understood. The Health and Safety at Work Act (1974)[16] places an obligation on the employer to take all reasonable steps to ensure that teachers operate in a safe environment. Further, the Local Government (Miscellaneous) Provisions (1982)[17] section 40, "creates a criminal offence of causing a nuisance or disturbance on educational premises". In

cases where a pupil is highly disruptive or violent, the Local Education Authority may have to resort to excluding the pupil, pursuant to Articles 23 to 27 of the 1986 Act, in order to ensure the safety of employees in the school.

The spectrum of responses to the behavioural problems which are employed in British schools, ranges from verbal reprimand to permanent exclusion. Although of necessity wide-ranging the sanctions could be divided as falling into a disciplinary model of practice, and a pastoral model (see figure I). In the former the traditional responses such as writing lines, detention and exclusion feature significantly. Alternatively, the latter is rooted in the pastoral care system with a focus on positive reinforcement, support and counselling. (Absent from this list but a reoccurring theme within Australian and American literature is the use of medication as a response to indiscipline which results in a partial sedating of pupils such as those diagnosed with Attention Deficit Syndrome).

Drawing on psychology, behavioural learning theory suggests that positive reinforcement as opposed to punishment will encourage good disciplinary practice. The principle is that you reward good behaviour and ignore the bad conduct. When ignoring indiscipline is impossible, punishment is used sparingly, and it must always be accompanied by explanation so pupils know why they are being punished. If punishment is used positively and unsparingly, the theory is that children will not change their behaviour, but will try and avoid getting caught.

Within the broad area of pastoral care discipline, a number of approached stand out. The Preventive Approach to Discipline, the Behavioural Approach to Teaching Secondary.

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Figure 1: <u>Some Alternatives to Corporal Punishment</u>

Verbal reprimand

Use of rewards

Token economy whereby tokens, stamps, etc are earned for good behaviour and traded for rewards

Withdrawal of privilege

Standing outside the classroom

Extra work - academic

Extra work - duties/chores

Making reparation

Time-out - removing a pupil form the situation

Social isolation within the school

Intervention by Year Head/Guidance Counsellor

"On report" system whereby behaviour is time tabled with or without parental knowledge

Threat of parental involvement

Parental involvement

Detention - informally during school day

Detention - official with parental knowledge

Counselling services

Temporary exclusion

Permanent exclusion

Pupil Referral Unit - off-site

Verbal reasoning

Positive reinforcement

Behaviour modification e.g. preventive approach to discipline (PAD); the behavioural approach to teaching secondary children (BATSAC).

Assertive discipline

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Children (BATSAC)[19], and Assertive Discipline all focus on changing pupils behaviour. For example, the latter, Assertive Discipline, is a theory based on an American system in which "zero tolerance" is shown to any infraction of discipline with the view that the overall ethos of the school will be permeated by an agreed and known code of conduct which is constantly being reinforced. There are a variety of kits and packaged materials now available based on disciplinary models such as those which focus on positive reinforcement and behaviour modification, rather than on a traditional model of punitive sanctions.

The awarding or withdrawal of rewards and privileges also characterise alternative sanctions and feature in many schools disciplinary policies. Beyond verbal praise, recognition of good behaviour in terms of rewards has strong support from psychologists. Derbyshire County Council (1993) for example lists appropriate rewards as including merit systems and competitions, public mention and acclaim, specific privileges, and the recording of achievements in pupil academic profiles (p.13). One of the problems concerning the withdrawal of privileges, however, is its efficiency for older children. From their research in New Zealand, Richie and Richie (1993) reported that

> "the secondary school systems had very few privileges to bestow or withdraw and they had often to rely too heavily on punishment"(p.90).

They maintain that we need to view public behaviour within a broad perspective of what happens in schools. This adds to a significant number of theorists who argue that strategies for managing behaviour requires schools to tailor their curriculum to meet individual needs (Parker-Jenkins and Irving 1995, Slee 1995, TES 1997).

Further, there may be an over-dependence on inappropriate and unimaginative methods of discipline; what has been described as "an arid set of traditional techniques such as detention systems, lines or primitive tasks such as cleaning the board" (Richie and Richie). Similarly,

> "schools that set up ... only a time-out room, find not surprisingly that everything untoward that happens, turns out to be a 'time-out' problem. No wonder the room becomes crowded!" (Tasmanian Department of Education, 1990).

As with corporal punishment, there is a danger of over-using on abusing a particular sanction. Finally, sanctions may also follow trends. Currently, there appears to be excessive use of exclusion as a disciplinary sanction in Britain. Likewise, Slee reports that the suspension rate in Australian schools has increased since physical chastisement has been removed.

Whatever alternative sanction are employed in schools, they need to be negotiated by representatives of the entire school community, including students, with a view to ensuring

consistency in treatment. No one strategy can be recommended, and there is not a blue print, or a solution which can be automatically applied to a South African problem. For policy to be effective, the school community must have input and understanding of a plan which is responsive to the needs and views of its members. Schools vary, pupil composition varies and cross-cultural issues have a bearing on devising a policy which is appropriate. As such there is no quick panacea for the problem of pupil indiscipline, rather a spectrum of responses from disciplinary models of practice countenancy "zero tolerance", to pastoral care models rooted in the school. This should be accompanied by A Code of Conduct addressing rules and punishment, based on principles of rights and responsibilities which are owned by and owed to all members of the school community.

In answer to the question posed at the beginning of this paper then, as to the alternatives to corporal punishment, the answer is multi-faceted and complex. The solution lies not in a mechanistic list or chain of sanctions which come into play according to the severity of the offence. To articulate sanctions in this way is to engage in exercises of gate-keeping, containment and social control. What is required is a repositioning of discipline and punishment to the centre of the educational agenda where the issue can be related to school environment, curriculum, pedagogical style and pastoral care system.

Exploring alternative sanctions to corporal punishment, is also about supporting not undermining the authority of the teacher, or abandoning discipline. It is about creating ideology which is rooted in democratic principles and empowerment. At its extreme, regulation and control of pupil behaviour via medication, for example, suggests not merely the production of "disciples rather than enquirers" (John Stuart Mill), but a reconstitution of old mechanisms of control to produce the "docile bodies" which Foucault (1979) described in the status quo of power relations.

Alternative sanctions must be placed on a legal footing in light of events which took place at Manton and the Ridings schools, and the reprimanding and disciplining of disruptive pupils will need to be well-conceived if teachers assume a more limited role of "in loco parentis", or none whatsoever. Perhaps, local authorities may need to assume the mantle of "in loco parentis" and designate very clearly those persons who assume the position within the context of the school. This would be in keeping with the French model in which "peons" are employed to deal

specifically with discipline. Disciplinary problems should not concern teachers who are not "in loco parentis" to pupils who are expected to teach , and the situation needs to be made clear. It could be argued that since teachers are only contracted to carry out reasonable instructions of the headteacher, the inclusion of a violent or a disruptive pupil may be considered patently "unreasonable"[21] . Moreover, teaching associations, ever more disturbed by their members' complaints of personal attacks by pupils[22], will endeavour to see that along with delineated duties, teacher's rights are given serious consideration particularly as they relate to safety at work.

The responsibilities of parents in ensuring their children's good behaviour requires attention and, in particular, the development of policy regarding recalcitrant parents. During the House of Lords debate on the Abolition of Corporal Punishment Bill (1973), Lord Ferrier stated:

> "one must remember that one of the teachers' troubles is that at the end of the scale there are too many parents who utterly fail to instil any sort of discipline in their children when they send them to school" (p.928)[23].

Teachers too presently having to adjust to major changes to the profession instigated during the educational reform of the last decade. Whether as a result by Strasbourg or Westminster, changes have been imposed rather than negotiated which have significantly adjusted the status of teachers in this country. The Court and Commission produced findings in corporal punishment cases demonstrating their unwillingness to endorse the practice and instead supported parents' and children's rights. Strasbourg waved the stick which brought British teachers into line with their European counterparts. As the Court and Commission have effectively been used to parents and pupils to secure their rights, teacher might well be persuaded that Strasbourg could be a useful forum for their own grievances[24]. The Convention does not cover economic and political rights of the workplace, but reliance might be placed on "the right to education" as inclusive of specific matters in the curriculum. Likewise, teachers might invoke Article 8 when a school's employment or disciplinary policy appears to breach "the right to a private life". To date, however, teachers have not felt the effect of Strasbourg rulings to enhance their rights but to fetter them. Now that corporal punishment has been abolished in maintained schools, the "in loco parentis" doctrine requires reappraisal as teachers operate in a system which has made adjustments to their newly

evolving status. A dramatic and immediate change away from pastoral responsibility to academic duties may not be feasible for British teachers given the historical background of the profession, and a shift towards this status is more likely to occur as a gradual move in the future. In the absence of strict guidelines today, as to where academic duties begin and pastoral obligations end, teachers will continue to do what has yet to be clearly defined!

(V) Rights in Conflict?

In the challenging of traditional, school based corporal punishment, there has been the assertion of children's rights vis-a-vis those of teachers. In the Nordic Circle of Sweden, Finland, Norway and Denmark, legislation aimed at outlawing physical chastisement in the home, extends this claim to parents. We move here into a complex and confusing debate over the rights of all individual and whether in fact there in thus a case of rights in conflict?

Philosophically, even small children have rights, a special interest group so important they are given special protection. To ignore these rights or entitlements can be to breach the law. Child abuse or neglect is an obvious example, but are there other rights that children have which others do not? Children have the right to be taken care of and this places obligations and responsibilities on others, such as parents and teachers, and restrains their liberty. It is, however, the category of rights which conflict with adult rights which has the potential for difficulty. For example, in a multicultural society, parents may argue their religious or philosophical beliefs require the use of physical chastisement and they may insist on using corporal punishment in the home. This is precisely the case of a group of Swedish parents Blom et al (1985), who were committed to their religious beliefs on the issue, but who failed to convince the European Court of human Rights in Strasbourg.

The concept of rights and entitlement extends to questions of justice, appeal and the challenging of arbitrary authority or decision-making. It includes issues of informed, consulted involvement and participation on matters which affect children's lives. In the Gillick case (1985)[25], courts have been persuaded that this is legitimate commensurate with the child's maturity.

Yet some ask (normally adults), are we going too far in our talk of children's rights? Clearly they have a right to be heard, but this does not necessarily mean a child getting his/her own way, as this may not be in their own interest. If children have more rights, do others have less? What about the integrity of the family? Parents have both a duty to care but also a right of autonomy underpinned by European and International law. Parents themselves may very well feel undermined by talk of children's rights . They may well feel benevolently that children should be kept in a vacuum marked "childhood" with appropriate clothes, friendships, literature and media; and to expose children to rights is to subject them to responsibilities they are unable to handle.

A century ago adults had more confidence about where they stood in relation to children they were in charge and children could be disciplined with confidence on the part of the parent or teacher. Today no such certainties exist. Arguably, the talk of children's rights has weakened this contract. Further if we equip children with rights, are they informed? This requires a democratic arrangement which may well be seen to undermine parent authority. Paradoxically, children are given rights which may well give adults the right not to behave responsibly. As such, the conferring of quasi-adult status on children may lead adults to behave irresponsibly.

Society is unwilling to tolerate child crime and searches for legal support. The tragedy of the James Bulger case(1993)[26], destroyed the idea of children as innocents. This has moved us on from a hundred years ago when the notion was that children should be seen and not heard. In the demonizing of children after this case, there has been the suggestion that children should not be seen or heard and night curfews, children's prisons and fast-track sentencing have been suggested for juvenile criminals. This retreat from notions of childhood is to abandon children to the same standards expected of adults. In that instance concepts of rights for children has to be located in the context of responsibilities. The adult side of the contract should be about providing love and care which government legislation and human rights conventions cannot guarantee. But children cannot wait until they are adults for "rights"! I would argue, therefore, that a pragmatic and realistic approach to children's rights should be utilised which positions the issue in the context of the age and maturity of the child. Furthermore, with rights come responsibilities and we may be in danger of placing on children a greater level of responsibility than they can realistically achieve. Returning to the issue of corporal punishment, however, this level of right which protects

the integrity of the physical person, has become and is likely to remain sacrosanct

Conclusion

Contradictory and confusing ideas are expressed in British educational policy of the last decade. The Government has espoused the notion of parents' and children's rights but has said very little of their responsibilities. Conversely, teachers have been barraged with demands increasing their responsibilities, but there has been mostly silence as to their rights. With regard to disciplinary matters specifically, teachers have a right to a safe working environment, as do pupils, and this cannot be compromised.

So what is to be done? The knee-jerk reaction to reach for the cane is unlikely to be possible. The Government will have to face the fact that the cane was cheap, its replacement is not. The legislation which removed corporal punishment said nothing about what should replace it. Schools in Britain have thus spent the last 10 years developing alternative models of discipline which are costly in terms of resources and time.

To rectify continuing concerns over discipline, a broader view needs to be taken of what is going on is schools. This begins with loosening up further the National Curriculum straight jacket and supporting curriculum offerings which engage with pupils' interests and strengths. In the present climate of uniformity, the less academic and special needs child struggles to keep pace in a system characterised by assessment, budgetary restraints and league tables. The current education bill aimed at increasing selection will undoubtedly exacerbate the situation for who will choose the child unable to contribute highly to a school's academic performance?

Finally, with the greater valuing of children must come the valuing of teachers who also have the rights in the educational process, and should be supported by an effective school governance system. There are no quick-fix solutions to our present predicament of alienated and unruly pupils: to call for the return of the cane is to merely underestimate the problem and over-simplify the solution!

References

Barnard,H.C. (1971) A History of English Education from 1760. London: London University Press.

Derbyshire County Council (1993) Good Behaviour Discipline and Managing Violence. Matlock: D.C.C.

Foucault,M.C. (1979) Discipline and Punishment: The Birth of a Prison. Harmondsworth: Penguin.

Gibson.I (1978) The English Vice: Beating, Sex and Shame in Victorian England and After. London: Duckworth.

Leinster-Mackay, D.P (1977) "Regina v Hopley: Some Historical Reflections on Corporal Punishment". Journal of Educational Administration and History. Vol.9 (1) pp1 - 6.

Mill,J.S. (1959) On Liberty Ed.G Himmel Farb (1974). Harmondsworth: Penguin.

Parker-Jenkins, M and Irving B (1995) "Tackling Truancy", Cambridge Journal of Education. Vol.25, No.2, pp.225 - 235

Richie. J and Richie. S (1981) Spare the Rod. Sydney: George Allen and Unwin.

Scott G.A. (1938) The History of Corporal Punishment: A Survey of Flagellation in its Historical, Anthropological and Sociological Aspects. London: T.Werner Laurie

Slee,R. (1995) Changing Theories and Practices of Discipline. London: The Falmer Press.

Tasmania Department of Education (1990)

Times Educational Supplement (1997)

Notes

1. Cited in Rosen, M (1984) The Penguin Book of Childhood. London: Open Books

2. See L.Gilkey (1965) Maker of Heaven and Earth. New York: Anchor Books

3. See for example principles of "fundamentalist" religions on this point.

4. Tyrer v UK (1978) European Court of Human Rights, Series A, No.26, 25 April

5. As cited in Hill, 1897, p.183

6. As cited in Barnard (1971)

9.. Council of Europe Collected Texts, Strasbourg.

8. Regina v Hopley (1860) 2 F & F

7.. See J.Gathorne-Hardy (1977) and The Rise and Fall of the Public Nanny (1975) Harmondsworth: Penguin

10. Mrs X v UK (1980) (Application No 7907/77). European Commission of Human Rights and Decision as to admissibility 12 July

11. Townend v UK (1986) (Application No 9119/80)

12. Campbell and Cosans v UK (1982) European Court of Human Rights Series A, No.48 & 60, 25 Feb 1982 and 22 March 1983.

13. The Sex Discrimination Act (1975) London: HMSO

14. See TES (1997)

15. See TES (1997)

16. The Health and Safety At Work Act (1974) London:HMSO

17. The Local Government (miscellaneous) Provisions Act (1982). London: HMSO

18. The Preventive Approach to Discipline

19. The Behavioural Approach to Teaching Secondary Children (BATSAC)

20. Assertive Discipline

21. See for example Campbell v Tameside Metropolitan Borough Council (1982) 2 ALL ER 791; 80 LGR 700 CA 207.

22. See for example Times Education Supplement

23. Hansard Parliamentary Debates, House of Lords, 5th Series, vol. No 347, 10 December 1973.

24. See for example of the case of a Surrey headmistress in dispute over the "traditional" style of education, in The Times, 2 Sept. 1986.

25 .Gillick v. Wisebeach Health Authority (1985)

26. See Parker-Jenkins and Irving (1995)